

JOINT SELECT COMMITTEE REPORTS OF LEGISLATIVE ASSEMBLY - 1923

The Mussalman Wakf Registration Act

List of Reports of Select or Joint Committees
presented in the Legislative Assembly in 1923.

Serial No.	Short title of the Bill.	Date of presentation.	Remarks.
1.	The Cotton Transport Bill.	15.1.23.	} Reports of the Joint Committee:
2.	The Cantonment(House Accommodation)Amendment Bill.	15.1.23.	
3.	The Indian Boilers Bill.	15.1.23.	
4.	The Indian Vines Bill.	16.1.23.	
5.	The Workmen's Compensation Bill.	24.1.23.	
6.	The Indian Official Secrets Bill.	31.1.23.	
7.	The Married Women's Property Bill by Mr.B.S.Kamet.	8.2.23.	
8.	The Indian Penal Code(Amendment) Bill(White Slave Traffic)	8.2.23.	
xxxxThe Indian Cotton Cess Bill by Mr.Seshagiri Ayyar		14.7.23.	
9.	The Indian Cotton Cess Bill.	14.7.23.	-do-
10.	The Code of Civil Procedure(Amendment) Bill by Dr.Hari Singh Gour.	20.2.23.	
11.	The Hindu Law of Inheritance(Amendment) Bill by Mr.T.V.Seshagiri Ayyar.	14.3.23.	No Copy available
12.	The Exclusion from Inheritance Bill by Mr.T.V. Seshagiri Ayyar.	14.3.23.	
13.	The Code of Criminal Procedure(Amendment) Bill (Sec.4) By Mr.Abul Kasem.	14. 3.23.	
14.	The Civil Marriage (Amendment) Bill by Dr.Hari Singh Gour.	14. 3.23.	
15.	The Mussalman Wakf Registration Bill by Mr.Abul Kasem.	15.3.23.	
16.	The Abolition of Transportation Bill.	3. 7.23.	
17.	The Indian Stamp (Amendment) Bill.	10.7.23.	
18.	The Indian Naturalization Bill.	10.7.23.	
19.	The Land Acquisition (Amendment) Bill.	16.7.23.	
20.	The Cantonments Bill.	18.7.23.	
21.	The Code of Civil Procedure(Amendment) Bill by Lala Girdhari Lal Agarwal.	24.7.23.	
22.	The Legal Practitioners Bill by Mr.K.C.Meegh.	24.7.23.	
23.	The Illegitimate Sons' Rights Bill.by Mr.V.K. Reddi Garu.	27.7.23.	

LEGISLATIVE DEPARTMENT.

We, the undersigned, Members of the Select Committee to which the Bill to provide for the registration of wakf estates and the proper rendering of accounts by the mutwallis of such estates in British India was referred, have considered the Bill and the paper noted in the margin, and have now the honour to submit this our Report with the Bill as amended by us annexed thereto.

2. In view of the opinions received and of certain difficulties which presented themselves to us in the course of our examination of the Bill, we have decided largely to reduce the scope of the Bill. We are, in the first place, impressed by the objection put forward by most Local Governments to the multifarious duties which the Bill as introduced imposes upon the District Officer, and we agree that the administration of the measure, even on the reduced scale which we now propose, ought not to be imposed upon that official.

In the second place, we consider that the difficulties attending the question of the appointment and constitution of District and Central Committees make it undesirable to retain the provisions of Chapter III and other provisions of the Bill consequential thereon. We realise that the appointment of such Committees by the Government might give rise to considerable misunderstanding and in some cases lead to discontent. At the same time, we are of opinion that the labour and expense of conducting the elections to such Committees on anything like a representative basis would go far to affect the utility of the proposed measure.

We further observe that some of the provisions of the Bill reproduce to a certain extent the provisions of existing enactments.

After full consideration of the whole question, we have decided that the Bill should make provision only for the compulsory rendition, as soon as possible after the commencement of the Act, of full particulars regarding each wakf, and thereafter of annual statements of accounts.

Other matters which call for special comment are dealt with in our remarks on the clauses of the Bill as re-drafted by us.

Clause 1.—As the subject-matter of the Bill is a provincial transferred subject under the Devolution Rules, we think it essential to give to each Local Government the power of deciding whether, and at what time, and in what places, operation is to be given to the Bill.

Clause 2.—The Court as defined in this clause will, except in the Presidency-towns and Rangoon, be identical with the Court empowered to take action under the Charitable and Religious Trusts Act, 1920.

We considered very carefully the cases of the wakfs to which the Act should be applicable and decided to exclude private wakfs of the nature described in section 3 of the Mussalman Wakf Validating Act, 1913, so long as any benefit, other than the emolument of a mutwalli as such, remains claimable thereunder by the founder of the wakf or any of his family or descendants. No doubt there will be some cases in which such benefit absorbs only a small portion of the income of the wakf. Nevertheless, it is in our opinion impossible to draw any satisfactory distinction between those and other cases and we see no alternative to the provision which we have accordingly made.

Clause 3. This clause follows closely clause 4 of the original Bill with the addition of a provision that a copy of the deed or instrument of wakf or, where such is unobtainable, full particulars of the origin of the wakf shall be furnished, together with certain additions consequential on our decision as to the classes of wakfs to be included within the scope of the Bill.

Clause 6.—We have provided in this clause for a compulsory annual audit which, in the case of wakfs with an income exceeding two thousand rupees per annum, is to be carried out by a properly certificated auditor and in other cases by a person authorised in this behalf by the Court. We realise it would be impossible in the case of the less richly endowed wakfs to compel an audit, the cost of which might be somewhat disproportionate to the annual income.

Clauses 7, 8 and 9. respectively, enable the mutwalli to debit to the wakf funds proper costs incurred in carrying out the provisions of the Act, require the verification of all statements, and provide for the granting of inspection and copies to the public of statements furnished under the Act.

Clause 10.—This clause provides a penalty for failure on the part of a mutwalli to comply with the provisions of the Act and includes provision for an enhanced penalty in the case of a second or subsequent offence.

Clause 12.—We have in this clause made *inter alia* a provision on the lines of section 9 of the Charitable and Religious Trusts Act, 1920, as we do not think it is necessary that the Act should be applied in the case of wakfs, the proper management of which is already sufficiently guaranteed.

3. The other provisions of the Bill do not, in our opinion, call for special comment.

4. The Bill was published in the Gazette of India, dated the 1st October, 1921.

5. Although the Bill as re-drafted by us differs considerably from the Bill as introduced, the scope of the latter has been greatly narrowed and such amendments as we have made in the provisions, the substance of which have been retained, are not of a far-reaching nature. We, therefore, do not think that the re-publication of the Bill is necessary, and we recommend that it be passed as now amended.

W. M. HAILEY.

S. M. ISMAIL.

T. RANGACHARIAR.

SHAHAB-UD-DIN.

SARFARAZ HUSAIN KHAN.

ABUL KASEM.

ABDUL RAHIM KHAN.

M. ASJAD ULLAH.

K. AHMED.

GIRDHARI LAL AGARWALA.

ABDUL QADIR.*

P. E. PERCIVAL.

W. M. HUSSANALLY.

Mr. IKRAMULLAH KHAN.

H. S. GOUR.

S. Mr. NABI HADL

DELHI;
The 15th March, 1923. }

* Subject to a minute of dissent.

Minute of Dissent.

I am sorry, I have to differ from the opinion of the majority with regard to their proposing under clause 6 of the Bill a compulsory audit of the statement of accounts before they are submitted by the mutwalli in the Court in which the wakf is registered

This means annually recurring audit charges and this will be strongly objected to by the mutwallis as well as the Muhammadan public. In my opinion if the Muhammadans interested in the wakf be dissatisfied with the statements of accounts after taking inspection, they may petition the District Judge to get the accounts audited at the cost of the wakf estate concerned.

ABDUL QADIR.

Dated the 15th March, 1923.

(Words printed in italics indicate the amendments suggested by the Committee.)

A

BILL

TO

Make provision for the better management of wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties.

WHEREAS it is expedient to make provision for the better management of wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties; It is hereby enacted as follows:—

Preliminary.

1. (1) This Act may be called the Mussalman Short title, extent Wakf Act, 1923. and commencement.

(2) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas.

(3) This section shall come into force at once.

(4) The Local Government may, by notification in the local official Gazette, direct that the remaining provisions of this Act, or any of them which it may specify, shall come into force in the Province, or any specified part thereof, on such date as it may appoint in this behalf.

2. In this Act, unless there is anything repugnant in the subject or context,—
Definitions.

(a) "benefit" does not include any benefit which a mutwalli is entitled to claim solely by reason of his being such mutwalli;

(b) "Court" means the Court of the District Judge or, within the limits of the ordinary original civil jurisdiction of a High Court, such Court, subordinate to the High Court, as the Local Government may, by notification in the local official Gazette, designate in this behalf;

(c) "mutwalli" means any person appointed either verbally or under any deed or instrument by which a wakf has been created, to be the mutwalli of a wakf, and includes a naib-mutwalli or other person appointed by a mutwalli to perform the duties of the mutwalli, and, save as otherwise provided in this Act, any person who is for the time being administering any wakf property;

(d) "prescribed" means prescribed by rules made under this Act; and

(e) "wakf" means the permanent dedication, by a person professing the Mussalman faith, of any property for any purpose

VI of 1913.

recognised by the Mussalman law as religious, pious or charitable, but does not include any wakf, such as is described in section 3 of the Mussalman Wakf Validating Act, 1913, under which any benefit is for the time being claimable for himself by the person by whom the wakf was created or by any of his family or descendants.

Statements of Particulars.

8. (1) Within six months from the commencement of this Act, every *obligation to furnish particulars relating to wakf.* mutwalli shall furnish to the Court within the local limits of whose jurisdiction the property of the wakf of which he is the mutwalli is situated, or to any one of two or more such Courts, a statement containing the following particulars, namely:—

- (a) a description of the wakf property sufficient for the identification thereof ;
- (b) the gross annual income from such property ;
- (c) the gross amount of such income which has been collected during the five years preceding the date on which the statement is furnished, or of the period which has elapsed since the creation of the wakf, whichever period is shorter ;
- (d) the amount of the Government revenue and cesses, and of all rents, annually payable in respect of the wakf property ;
- (e) an estimate of the expenses annually incurred in the realisation of the income of the wakf property, based on such details as are available of any such expenses incurred within the period to which the particulars under clause (c) relate ;
- (f) the amount set apart under the wakf for—
 - (i) the salary of the mutwalli and allowances to individuals ;
 - (ii) purely religious purposes ;
 - (iii) charitable purposes ;
 - (iv) any other purposes ; and
- (g) any other particulars which may be prescribed.

(2) Every such statement shall be accompanied by a copy of the deed or instrument creating the wakf or, if no such deed or instrument has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the mutwalli, of the origin, nature and objects of the wakf.

(3) Where—

- (a) a wakf is created after the commencement of this Act, or
- (b) in the case of a wakf such as is described in section 3 of the Wakf Validating Act, 1913, the person creating the wakf or any member of his family or any of his descendants is at the commencement of this Act alive and entitled to claim any benefit thereunder,

VI of 1913.

the statement referred to in sub-section (1) shall be furnished, in the case referred to in clause (a), within six months of the date on which the wakf is created or, if it has been created by a written document, of the date on which such document is executed, or, in the case referred to in clause (b), within six months of the date of the death of the person entitled to such benefit as aforesaid, or of the last survivor of any such persons, as the case may be.

4. (1) When any statement has been furnished under section 3, the Court shall cause notice of the furnishing thereof to be affixed in some conspicuous place in the Court-house and to be published in such other manner, if any, as may be prescribed, and thereafter any person may apply to the Court by a petition in writing, accompanied by the prescribed fee, for the issue of an order requiring the mutwalli to furnish further particulars or documents.

(2) On such application being made, the Court may, after making such inquiry, if any, as it thinks fit, if it is of opinion that any further particulars or documents are necessary in order that full information may be obtained regarding the origin, nature or objects of the wakf or the condition or management of the wakf property, cause to be served on the mutwalli an order requiring him to furnish such particulars or documents within such time as the Court may direct in the order.

Statement of Accounts, and Audit.

5. Within three months after the thirty-first day of March next following the date on which the statement referred to in section 3 has been furnished, and thereafter within three months of the thirty-first day of March in every year every mutwalli shall prepare and furnish to the Court to which such statement was furnished a full and true statement of accounts, in such form and containing such particulars as may be prescribed, of all monies received or expended by him on behalf of the wakf, of which he is the mutwalli, during the period of twelve months ending on such thirty-first day of March or, as the case may be, during that portion of the said period during which the provisions of this Act have been applicable to the wakf:

Provided that the Court may, if it is satisfied that there is sufficient cause for so doing, extend the time allowed for the furnishing of any statement of accounts under this section.

6. Every statement of accounts shall, before it is furnished to the Court under section 5, be audited—

- (a) in the case of a wakf the gross income of which during the year in question, after deduction of the land revenue and cesses, if any, payable to the Government, exceeds two thousand rupees, by a person who is the holder of a certificate granted by the Local Government under section 144 of the Indian Companies Act, 1913, or VII of 1913, is a member of any institution or association the members of which have been declared under that section to be entitled to act as auditors of companies throughout British India; or

- (b) in the case of any other wakf, by any person authorised in this behalf by general or special order of the said Court.

General Provisions.

7. Notwithstanding anything contained in the deed or instrument creating any wakf, every Mutwalli entitled to pay cost of audit, etc., from wakf funds. mutwalli may pay from the income of the wakf property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 3 or section 4 or in respect of the preparation or audit of the annual accounts for the purposes of this Act.

8. Every statement of particulars furnished under section 3 or section 4, and every statement of accounts furnished under section 5, shall be written in the language of the Court to which it is furnished and shall be verified in the manner provided in the Code of Civil Procedure, 1908, for the signing and verification of pleadings.

9. Any person shall, with the permission of the Court and on payment of the prescribed fee, at any time at which the Court is open, be entitled to inspect in the prescribed manner, or to obtain a copy of, any statement of particulars or any document furnished to the Court under section 3 or section 4, or any statement of accounts furnished to it under section 5, or any audit report made on an audit under section 6.

Penalty.

10. Any person who is required by or under section 3 or section 4 to furnish a statement of particulars or any document relating to a wakf, or who is required by section 5 to furnish a statement of accounts, shall, if he, without reasonable cause the burden of proving which shall lie upon him, fails to furnish such statement or document, as the case may be, in due time or furnishes a statement which he knows or has reason to believe to be false, misleading or untrue in any material particular, or, in the case of a statement of accounts, furnishes a statement which has not been audited in the manner required by section 6, be punishable with fine which may extend to five hundred rupees, or in the case of a second or subsequent offence, with imprisonment which may extend to three months, or with fine which may extend to two thousand rupees, or with both.

Rules.

11. (1) The Local Government may, after previous publication, by notification in the local official Gazette, make rules to carry into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the additional particulars to be furnished by mutwallis under clause (g) of sub-section (1) of section 3;

- (b) *the fees to be charged upon applications made to a Court under sub-section (1) of section 4 ;*
- (c) *the form in which the statement of accounts referred to in section 5 shall be furnished, and the particulars which shall be contained therein ;*
- (d) *the powers which may be exercised by auditors for the purpose of any audit referred to in section 6, and the particulars to be contained in the reports of such auditors ;*
- (e) *the fees respectively chargeable on account of the allowing of inspections and of the supply of copies under section 9 ;*
- (f) *the safe custody of statements, audit reports and copies of deeds or instruments furnished to Courts under this Act ; and*
- (g) *any other matter which is to be or may be prescribed.*

12. Nothing in this Act shall—

Savings.

- (a) *affect any other enactment for the time being in force in British India providing for the control or supervision of religious or charitable endowments, or*
- (b) *apply in the case of any wakf the property of which—*
 - (i) *is being administered by the Treasurer of Charitable Endowments, the Administrator General, or the Official Trustee ; or*
 - (ii) *is being administered either by a receiver appointed by any Court of competent jurisdiction, or under a scheme for the administration of the wakf which has been settled or approved by any Court of competent jurisdiction or by any other authority acting under the provisions of any enactment.*

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

Report of the Select Committee on the
Bill to make provision for the better
management of wakf property and for
ensuring the keeping and publication of
proper accounts in respect of such pro-
perties, with the Bill as amended.